

10.03.00.00 - RELOCATION NOTICES and OCCUPANCY CERTIFICATIONS

10.03.01.00 Notices

The Uniform Act and 49 CFR 24 prescribe general requirements governing the provision of relocation payments and other relocation assistance. The requirements mandate that potential displacees receive appropriate and timely notices that explain the relocation program and their entitlements.

As such, the Region/District must provide all potential displacees with the appropriate notice described in this section, in writing and within the timeframe prescribed.

If the person is unable to read and understand the notice, the RAP Agent must provide the person with appropriate translation and counseling.

Each notice will include the name and telephone number of the RAP Agent to be contacted for answers to question or other needed help.

All notices should be personally served. If personal service is impossible (occupants are in the armed forces, impacted property is for storage only), the notice may be sent by certified or registered first-class mail (return receipt requested and received), with another copy of the notice sent simultaneously by regular first-class mail. The date of service shall be five (5) days for California residents, 10 days for U.S. residents, and 20 days for all others.

10.03.02.00 General Information Notice [49 CFR 24.203(a)]

The first notice provided to the potential displacees is the General Information Notice (GI Notice) (RW 10-7). The mandatory format should not be changed except to add the potential displacee's name and the project identification (Dist-Co-Rte-K.P.-Parcel) and the date the Notice is sent.

The GI Notice is mailed to the potential displacee within three (3) working days of the RAP Branch's receipt of the Parcel Occupancy Data Sheet provided by the Appraiser.

The Notice should be mailed with a copy of the appropriate Relocation Brochure and the assigned Agent's phone number.

Since Title VI information is provided to the owners by either the Appraiser or the Acquisition Agent, the RAP Branch need only send the Title VI information (see 2.04.01.02) to tenants or lessees.

The purpose of the GI Notice is to briefly describe the relocation program and to inform the potential displacees that they will be:

- (1) displaced by a public project,
- (2) given reasonable relocation advisory services, including referrals of replacement properties, help in filing payment claims, and other necessary assistance to help the person successfully relocate,
- (3) given 90 days' advance written notice before they are required to move,
- (4) given the address of at least one comparable replacement residential property before they are required to move,
- (5) and the right to appeal if they question the Department's determination of eligibility or benefits.

The RAP Agent must send the GI Notice to all owner and tenant/lessee occupied properties. The owner cannot prevent the District from notifying tenants of the benefits they may be eligible to receive under the Uniform Act. The RAP Agent should advise the owner that it is necessary that the tenants receive a full explanation of the relocation program that includes advising them that there is no rush for them to relocate. If the owner is concerned the tenants will move and there will be a loss of rental income, the Region/District may offer to make a payment to replace lost rent for vacancies occurring due to relocation for a reasonable period of time.

10.03.03.00 **Legal Residency Requirement to Obtain Benefits**

All relocation notices must inform the persons that anyone not lawfully present in the United States is ineligible for relocation advisory services and relocation payments, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child.

Notice to potential displaced persons of legal U.S. residency requirements to obtain benefits will be made at the earliest possible time, but no later than the provision of the GI Notice (RW 10-7). Information on residency requirements will be included in the RAP package made available to owners and tenants.

Requirements for U.S. Certification will be included in the General Relocation Information Notice, the Relocation Brochure, and all Notices of Eligibility and Conditional Entitlement Letters.

10.03.04.00 **Notice of Intent to Acquire (NIA)**

Normally the first notice the owner of the property receives is a Notice of Intent to Appraise or a Notice of Intent to Inspect (\$10,000 and Under approach) from the Appraisal Branch. However, the owner could have contacted the Region/District earlier because of a need to relocate prior to the Appraiser's inspection. If the Region/District determines that there is a need to protect the owner's relocation benefits, then the Acquisition Branch (see 5.03.00.00) will send a NIA (RW 10-8) to the owner-occupants to:

- Protect the eligibility of prospective displacees who need to move prior to the first written offer on the parcel.
- Prevent dual eligibility.
- Assure that all persons are fully aware of relocation assistance benefits and requirements.

The Region/District DDC should use the following to determine if a NIA is appropriate:

- Only owner-occupants (residential/non-residential) qualify
- The owner-occupant must meet the same criteria for a hardship outlined in Section 5.03.04.01.
- The owner-occupant must agree to rent the property back to the Department for economic rent.
- The appraisal must be complete and a first written offer made within 60 days. In some instances, the appraiser may have already issued the Notice of Decision to Appraise and/or inspected the property, but the determination of fair market value (and the subsequent FWO) will be delayed beyond a reasonable period of time, and the owner-occupant must relocate immediately.
- If the owner-occupant does not accept the offer within the prescribed time (60-90 days), condemnation proceedings must be initiated, or the acquisition offer withdrawn (see 05.04.03.06).

NIA LIMITATIONS	
Project Type	Issuance
Regularly-funded	Do not issue the NIA until the initiation of negotiations for the project has been authorized.
Federally-funded	In addition to the above, do not issue the NIA prior to FHWA authorizing acquisition on the project.
Not regularly funded	Appropriate formal approval of a Hardship Acquisition is required, along with the owner-occupants statement that they must relocate prior to the FWO.

The RAP Agent is responsible for issuing the NIA to the owner in person along with the RAP package. The Conditional Entitlement Letter with the specific amount of the RHP cannot be provided to the owner-occupant until the appraisal is complete and the first written offer made by the Acquisition Agent. It is strongly suggested that the RAP Agent accompany the Acquisition Agent on the FWO as eligibility for relocation benefits and initial information was already provided.

In some cases the owner-occupant may not be available for a personal call to deliver the NIA, FWO, or RAP Package because they have relocated out of the area. In that case, all documents must be mailed certified to the owner.

The NIA shall be dated the day that it is served. It shall contain the anticipated date of initiation of negotiations and specify how additional information pertaining to relocation benefits can be obtained.

The NIA should never be issued to tenants or lessees (residential/non-residential).

10.03.05.00 Certificates of Occupancy

To be eligible for relocation benefits, status of the occupants must be obtained via a certification of occupancy.

The Appraiser provides the Parcel Occupancy Data Sheet to the RAP Senior stating the type of occupants on the property (residential or business, owner or tenant/lessee) and the approximate time period they have occupied the property.

The Acquisition Agent obtains a signed Certificate of Occupancy and Receipt of Relocation Benefits at the time of the FWO (and first RAP Call) for all owner occupied properties. This will determine the number of occupants that are eligible for DS&S housing, and their tenure.

The Acquisition Agent obtains a signed Owner's Certificate of Tenants from the owner at the time of the FWO. The RAP Agent will make the first RAP Call on the tenants and verify the information on the Certificate.

All occupants must certify their residency status at the time of the first RAP Call.

10.03.06.00 **U.S. Residency Certification**

Certification should be done by completing RW 10-44 at the time the owner or tenant signs the Certificate of Occupancy or receives the Notice of Eligibility, whichever is earlier.

For residential occupants, the head of household will certify himself/herself, and may also certify other family members.

A sole proprietor will certify himself/herself.

For partnerships and corporations, the certification may be signed by a person authorized to sign on the entity's behalf.

The Department must receive certification before any claim can be paid.

10.03.07.00 **Notices of Eligibility [49 CFR 24.203(b)]**

Eligibility for relocation assistance shall begin on the date of initiation of negotiations (generally the FWO but possibly the date of the NIA) for the occupied property. When this occurs, the Region/District must provide the occupants with a notice, in writing, of their eligibility for applicable relocation assistance via a Notice of Eligibility.

This makes the Notice of Eligibility the most important document that is provided to the displacee because it informs them that they have been determined to be eligible for relocation benefits. There is a different Notice of Eligibility for each type of occupancy so care must be exercised to ensure that the appropriate Notice of Eligibility is provided in a timely manner.

The Notice of Eligibility for owners (residential and non-residential) MUST be given by either the Acquisition Agent or the RAP Agent on the day of the FWO. The Notice of Eligibility for tenants or lessees (residential and non-residential) MUST be given by the RAP Agent within 14 days of the FWO.

The timing and format for each type of Notice of Eligibility is described in Table 10.03-A. Refer back to Table 10.01-A if there is a question about type of occupancy. See 10.04.00.00 (residential) and 10.05.00.00 (non-residential) for specific details about the type of relocation benefits.

10.03.08.00 **Reminder Notice**

The RAP Agent shall send timely written notification of the possible loss of rights and expiration dates to persons who:

- Are eligible for monetary benefits, and
- Have moved from the acquired property, but
- Have not filed a claim.

Notification shall be sent periodically throughout the qualification period. If no response to the written notification is received, the RAP Agent should make telephone contact within the appropriate time limit and document the contact in the parcel diary.

Table 10.03-A

DELIVERY OF NOTICES OF ELIGIBILITY		
Notice	Timing	Form
180-Day Homeowner Occupants	Notice of Eligibility: As part of the RAP Package, at the time of the FWO by the Acquisition Agent.	RW 10-11
	Conditional Entitlement Letter with specific amounts for the Fixed Move Schedule and the PD, within 30 days of FWO.	RW 10-11A
90-Day Occupants	Notice of Eligibility: As part of the RAP Package, at FWO of a 90-day owner or a 90-day tenant, or within 14 days of FWO by the RAP Agent.	RW 10-12
	When displacees indicate they are actively looking for a displacement dwelling , or when the Department has control of the property (e.g., COE, Effective OP, Executed RE or APU, FOC), - whichever occurs first	RW 10-13
Non-Tenured Occupants	Notice of Eligibility: As part of the RAP Package, within 14 days of FWO by the RAP Agent. For occupants who move in after the FWO, within 14 days of notification that they are in occupancy.	RW 10-14
	When displacees indicate they are actively looking for a displacement dwelling, but not before the Department has control of the property (e.g., COE, Effective OP, Executed RE or APU, FOC) - whichever occurs first.	RW 10-16
Business, Farm, or Nonprofit Organization	Owner Occupants – at the time of the FWO by Acquisition Agent. Lessees/Tenants Occupants - within 14 days of FWO.	RW 10-17
Non-Occupant Owner - whose sole activity at the site is leasing space to others	At the time of the FWO.	RW 10-43
Personalty Only	Owner - at FWO. Tenant - 14 days.	RW 10-15

Notices of Eligibility are delivered with the RAP Package:

- a) to the owners by the Acquisition Agent during the FWO.
- b) to tenants by the RAP Agent within 14 days of the FWO (exception RW 10-13 and RW 10-15).

If an updated RHV indicates a change in entitlement amount, the RAP Agent must send a revised entitlement letter to displacee.

10.03.09.00 **90-Day Notices [49 CFR 24.203(c)]**

No eligible displacee shall be required to move unless he or she has received at least 90 days advance written notice of the earliest date by which he or she may be required to move.

There are two alternative methods for providing notice to vacate:

- 90-Day Information Notice followed by a 30-Day Notice to Vacate with date certain.
- 90-Day Notice to Vacate with date certain.

10.03.09.01 **Timing**

The RAP Agent may issue the notice 90 days before the person is expected to be displaced, or earlier.

Timing for service of notices is based on project certification dates. Notices should be served with adequate lead-time to carry out a timely, orderly, and humane relocation program. To the greatest extent practicable, persons lawfully occupying real property (not delinquent in their rent to the owner or the Department or in violation of their Rental Agreement in some other manner) shall be given a 90-Day Information Notice no earlier than 120 days prior to the State's anticipated need for possession and control of the subject property. When at least 60 days have passed, a 30-Day Notice to Vacate can be issued IF the effective date is after the state obtains control of the property.

The 90-Day Information Notice may not be served prior to initiation of negotiations for acquisition for the property, and, as a general rule, shall not be served until the Department has obtained legal possession of the property. Notices to Vacate (49 CFR 24) cannot be given if control of the property has not been initiated via a Right of Way Contract, an RE or APU, or initiation of condemnation.

On an exception basis, such as projects with short lead-time or instances where rental delinquencies can be anticipated, a 90-Day Information Notice may be given on or after initiation of negotiations for the parcel. In such instances, the 30-Day Notice to Vacate shall not be given until the Department has legal possession of the property and the owner has access to the acquisition monies to purchase replacement property.

A 90-day Notice to Vacate may only be issued if the Region/District is sure that the Department will have control of the property prior to the "date certain" provided in the notice.

In either event, lawful eligible occupants must be informed of the maximum relocation housing payment amount to which they are entitled at least 90 days prior to the time they are required to vacate (with the appropriate Conditional Entitlement Letter).

Situations will occur where projects slip and the need for clearance is postponed after issuance of 90-Day Information Notices. If 30-Day Notices to Vacate are not served within six months following issuance of the 90-Day Information Notices, the original 90-Day Information Notices shall be canceled and new ones issued when the need for clearance arises again.

Absentee owners of personal property are considered to be occupants of real property to be acquired, and ARE entitled to a 90-day Notice. Any person who exercises physical control over the land, including the right to store personal property on the land, is a lawful occupant and is entitled to the 90-day Notice.

10.03.09.02 **Content**

The 90-day Notice to Vacate states a specific date as the earliest date by which the occupant may be required to move. The 90-Day Informational Notice states that the occupant will receive a further notice, at least 30 days in advance, indicating the specific date by which he or she must move.

Neither 90-day notice should be issued before a comparable replacement dwelling is made available.

10.03.09.03 **90-Day Information Notice**

The 90-Day Information Notice is not a notice to vacate. The RAP Agent serves the 90-Day Information Notice in person on eligible and ineligible lawful occupants who:

- Are required to vacate because of the proposed construction or other State use, and
- Have personal property located on the acquired property.

Since replacement housing must be available and offered to eligible displacees before a Notice to Vacate can be issued, District Right of Way must coordinate acquisition, clearance, rental, and RAP functions to ensure appropriate notices are issued in a timely manner to vacate the property and certify the project.

10.03.09.04 **90-Day and 30-Day Notices to Vacate**

A 30-Day Notice to Vacate may be issued after 60 days have passed since the 90-Day Information Notice was issued. This notice cites a specific date by which the displacee must vacate. This date may be extended, but any extension must be in writing and must cite a new specific date by which displacee is to vacate. Extending the 90-day or 30-day Notice to Vacate does not affect the validity of any notices issued by property management preceding an unlawful detainer action.

Since no eligible person shall be served a Notice to Vacate for a residential unit unless appropriate housing is available, the address of at least one available comparable property replacement, but preferably three, must be offered to displacee simultaneously with the Notice to Vacate. The property must be available and must not exceed the “probable replacement value or rent” provided to the displacee in the latest Notice of Eligibility or Conditional Entitlement Letter.

Property Management cannot issue a 30-Day Notice of Termination of Tenancy and Notice to Quit, until after the day that the Department has possession of the property (RW 11-10). However, RAP can issue the 90-Day Notice to Vacate and the 30-Day Notice to Vacate prior to having control of the property, as long as the Region/District is certain the Department will have control before the 90-day or 30-day period expires.

If a 90-day Notice to Vacate is issued, the Region/District does not need to issue a 30-day Notice to Vacate.

Control of the property is obtained on the date escrow is closed, the Final Order in Condemnation is recorded, the date of possession in the Right of Way Contract (RWC), Right of Entry (RE) or Agreement for Possession and Use (AP&U), or the effective date of the Order for Possession (OP) - usually 30 or 90 days after the court has executed the document before the Department can have physical possession. The owner of the property must have the acquisition funds available to purchase replacement property before the effective date of the 90-day or 30-Day Notice to Vacate. (Exception: 90-day Information Notice.)

Federal regulations require that all occupants be allowed a minimum of 90 days to locate replacement property. To ensure the 90-Day Notice to Vacate with date certain is legally enforceable, eligible residential occupants must be given:

- Conditional Entitlement Letters, updated as appropriate with changes in the RHP.
- At least one, but preferably three, comparable replacement properties.

Either a RAP Agent or Acquisition Agent must serve the Notice to Vacate in person.

If the address of the most comparable property is no longer available, the Region/District must ensure some comparable replacement property is available, within the displacee's financial means, but it is NOT necessary to reissue a 90-day Notice to Vacate. The original 90-day period can continue to run.

10.03.10.00 **Notice to Vacate with OP**

If the OP contains a specific effective date, the RAP Unit issues a 90-Day Notice to Vacate that is served simultaneously with and is effective the same date as the OP.

If the OP does not contain a specific date by which it will become effective, the RAP Unit serves a separate 90-Day Notice to Vacate that is effective the same date as the OP and accompanies the service of the OP. The person making service must calculate the 90th day. Since this is a RAP notice with a date certain, it must be accompanied by the address of at least one comparable replacement dwelling. A 30-Day Notice to Vacate is not required.

If appropriate, the RAP Unit issues a 90-Day Information Notice before the court issues the OP, then issues a 30-Day Notice to Vacate with a date certain after the court issues the OP. The person making service must calculate the 30th day. In this case, displacee must receive a full offer of their entitlements and must be furnished the address of at least one comparable replacement dwelling with the 90-Day Information Notice. The effective date of the 30-Day Notice to Vacate cannot be earlier than the effective date of the OP.

10.03.11.00 **Notices to Unlawful Occupants**

Eligible tenants who are either delinquent in their rental payments to the Department, or in violation of their rental agreement with the Department, are considered unlawful occupants and are served either a 3-Day Notice to Pay Rent or Quit or a 30-Day Notice of Termination of Tenancy and Notice to Quit by Property Management. Property Management is responsible for advising the Region/District RAP Agent that Property Management will begin eviction proceedings.

The RAP Agent must ensure service of the 90-Day Notice to Vacate or the 90-Day Informational Notice with a 30-Day Notice to Vacate is coordinated with Property Management's notices. At no time can the eligible displacee be forced to move unless the conditions of the Uniform Act's notices have been met. Property Management is responsible for advising the Region/District RAP Agent that Property Management will begin eviction proceedings. Copies of both the RAP notices and the Property Management notices must be retained in the RAP file.

Once Property Management decides to evict an unlawful eligible tenant, the eviction process should be carried to conclusion.

Eligible tenants who are evicted by the Department because of unlawful occupancy must be advised that:

- They retain eligibility for relocation advisory assistance.
- Relocation payments and any other payments may be subject to satisfaction of debts owed to the State. (See Section 10.08.10.01 on Delinquent Rent to determine affordability prior to withholding RAP payments.)

Ineligible displacees will not receive relocation benefits. Generally these occupants are State tenants who rent the property after acquisition by the State. There are no requirements to provide ineligible displacees with the RAP 90-Day or 30-Day notices.

Although the Department is under no obligation to the unlawful ineligible tenant, District personnel are encouraged to provide advisory services as a method of assisting unlawful tenants in vacating the property, particularly where hardship conditions exist.

10.03.12.00 **Urgent Need**

In extremely rare circumstances, an eligible displacee may be required to vacate the property on less than 90 days advance written notice. The Department must determine that delivery of the 90-day notice is impracticable in order for this to occur (i.e., the person's continued occupancy of the property would constitute a substantial danger to health or safety to those occupants or others). The RAP diary should fully document the circumstances that required someone to move prior to issuing either the 90-day or 30-day Notice to Vacate.

10.03.13.00 **Notice to Withdraw or Modify Relocation Benefits**

There are situations when it is appropriate to withdraw or modify the relocation benefits that have been provided in a Notice of Eligibility or a Conditional Entitlement Letter. Any time there is a change in the benefits that will be provided to a displacee, the Agent must immediately provide a Notice to Withdraw or Modify Relocation Benefits. The Notice must be personally delivered if possible, but at the very least sent by certified registered mail. However, if the displacee has relied on the promise of relocation benefits and has committed themselves financially or via a contract, the Department may be obligated to pay those relocation benefits in question. Refer to 10.01.04.00 for discussion of Promissory Estoppel and 10.09.07.00 for discussion on appeals due to Promissory Estoppel.

There is no standard form for a Notice to Withdraw or Modify Relocation Benefits. The Agent should prepare a letter that addresses the particular benefit(s) that is impacted (previous amounts, new amounts, reason for the change, etc.) and the right for the person to appeal the determination. A copy of the Appeal Form (RW 10-6) should be provided upon request.

10.03.13.01 **Withdrawal of Benefits**

If the Department determines that a person or persons who has received a Notice of Eligibility is no longer eligible for any of the relocation benefits discussed in the letter, then withdrawal of all relocation benefits must be provided. Note: "All relocation benefits" include Advisory Assistance.

The following situations require an immediate notification to the displacee that their benefits are being withdrawn:

1. A long-term postponement of the project creates a situation wherein only irrevocable commitments are allowed under Departmental policy. Withdrawals must be in accordance with the Department's policy specific to that project (see Section 10.17.00.00 OLD and RARF No. 94-5 OLD).
2. A design modification reduces the requirement for some or all of the property, and the person is no longer required to relocate.

3. The occupant's status as a tenured resident or a valid business is in question, and the Agent has determined they no longer qualify for relocation benefits.
 - A resident purporting to be in occupancy for 90 days is only a seasonal resident and has a primary residence elsewhere.
 - A business claims to operate on the property, but in fact only stores personal property at the site and the business license (and other documentation) shows the primary place of business is at another site.
4. The Department and the occupant are no longer pursuing advanced acquisition, and tenants who have already made efforts to relocate but do occupy the property.

A person who receives a Notice of Withdrawal or Modification of Benefits is entitled to appeal the determination. If the person claims Promissory Estoppel, the Statewide Appeals Board must hear the appeal. (See 10.09.07.00.)

There may be other situations that require an immediate withdrawal of benefits. Contact HQ R/W if there are questions about whether a notice should be issued.

10.03.13.02 **Modification of Benefits**

A modification of benefits includes increases and decreases of a monetary benefit, but the person is still entitled to some of the relocation benefits discussed in the Notice of Eligibility.

1. A change in the real estate market indicates the cost of a comparable replacement property is lower than the previous entitlement.
 - A 180-day owner-occupant's price differential is rarely reduced, and only when the Department can document that the person has made no effort to find replacement property based on the amount in the Conditional Entitlement Letter.
2. The 180-day owner-occupant wants to rent.
3. The residential occupant has requested, and received, approval to occupy non-DS&S housing as to size and number of bedrooms.
4. The residential occupant has vacated the displacement property, but has not found replacement property within the one-year time period. (See 10.08.02.00.)
5. A change in the acquisition offer (revised appraisal, administrative settlement) requires a change in Replacement Housing Valuation adjustment (major exterior attribute) or carve-out value (typical residential lot), which modifies the RHP.
6. A further review of the non-residential operation's documents indicates a change in the previously discussed in-lieu payment, reestablishment payment, or other moving payment.
7. A member of a residential household dies prior to relocation, and the need for a larger replacement property, or a property that is barrier free, no longer exists.
 - The Modification of Benefits can only be mailed after a new RHV is prepared, and only if the occupants have not made a commitment to rent or purchase replacement property.

A person who receives a Notice of Withdrawal or Modification of Benefits that decreases a monetary benefit is entitled to appeal the determination.

There may be other situations that require an immediate withdrawal of benefits. Contact HQ R/W if there are questions about whether a notice should be issued.